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09/878,245	06/12/2001	Katrina L. Dewar	2951.03US02	3786

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EXAMINER
WONG, LUT

ART UNIT	PAPER NUMBER
2129	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	09/878,245	DEWAR, KATRINA L.
	Examiner	**Art Unit**	
	LUT WONG	2129	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>22 December 2008</u>.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>15-35</u> is/are pending in the application.

    4a) Of the above claim(s) <u>18-35</u> is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>15-17</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

This office action is responsive to an AMENDMENT entered Dec 22, 2008 for the

patent application 09/878245.

Status of Claims

Claims 15-17, 18-35 are pending. Claims 15-17 have been amended. Claim 18-

35 are new.

Election by original presentation

Newly submitted claims 18-35 directed to an invention that is independent or

distinct from the invention originally claimed for the following reasons:

Inventions 18-35 and 15-17 are related as process and apparatus for its practice.

The inventions are distinct if it can be shown that either: (1) the process as claimed can

be practiced by another and materially different apparatus or by hand, or (2) the

apparatus as claimed can be used to practice another and materially different process.

(MPEP § 806.05(e)). In this case, the process can be practiced by different apparatus.

Examiner Note: It is not clear why claims 18-35 are added to instant application.

Perhaps the applicant can explain why these claims, which correspond to claims in child

case 12/338703, should have been considered.

Nevertheless, since applicant has received an action on the merits for the

originally presented invention, this invention has been constructively elected by original

presentation for prosecution on the merits. Accordingly, claims 18-35 are withdrawn

from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b)

and MPEP § 821.03.

Claim Rejections - 35 USC § 112

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject

matter which applicant regards as the invention, as set forth in the previous office

action for reason of record.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

In re pg. 13, applicant argues that the limitation has been removed, thus render

the rejection moot.

In response, such limitation has <u>not</u> been removed. The rejection is still deem

appropriate.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ed

Rubinstein ("Operators embrace automated systems to hire the best, reduce turnover"

1997). Examiner Notes (EN) and related citations are denoted in parenthesis.

Claim 15: Rubinstein anticipates an electronic prediction system for assessing a

suitability of job applicants for an employer (See e.g. abstract where it states "PC-based

systems and telephones have begun permeating the foodservice hiring process related to *pre-*

employment recruitment and screening"), the electronic prediction system comprising:

a plurality of terminals connected to the Internet and accessible by the applicants

(See e.g. abstract where it states "DPDApplicant, developed by Decision Point Data Inc.,

comprises proprietary software and a portable computer, display and telephone unit called a *Screen*

Phone.");

an applicant screening server connected through the Internet to the terminals,

the applicant screening server having a testing computer program and storing test data

(See e.g. pg. 3 where it states "Once an application is complete the DPD Screen Phone transmits

responses to Decision Point Data's *host system*,");

a statistical correlation system for validating a set of application questions by

statistically correlating job performance ratings of a plurality of workers who were hired

with previous responses given by the plurality of workers to application questions before

the plurality of workers were hired (EN: drawn to measuring the effectiveness of the

hiring questions. See also pg. 3 "On a monthly basis, DPDApplicant generates an employee

"Profiler," which over time allows organizations to **benchmark** the success of its hiring practices by

measuring average employee-retention patterns and turnover rates," *EN: the retention patterns and*

turnover rates are a measure of the usefulness of the hiring questions);

a website identified by a uniform resource locator indicated in an employer job advertisement (See e.g. pg. 4 where it states "As the Internet gains even greater acceptance, foodservice operators will utilize the *World Wide Web* to prescreen applicants"); the website configured to present application questions to the applicants at the terminals and to receive applicant responses entered at the terminals in response to presentation of the application questions (See e.g. pg. 3 where it states "A DPDApplicant interview begins with the job applicant *using the Screen Phone* to provide biographical information and an employment history"), the application questions comprising (*EN: ¶1 applies*):

requirements questions eliciting information on whether the applicants meet employment requirements (*EN: ¶1 applies*. See e.g. pgs. 2-3 where it states "A DPDApplicant interview begins with the job applicant using the Screen Phone to provide *biographical information and an employment history*, though *questions* can be customized for any foodservice operator. However, in addition to closed-end questions, DPDApplicant asks multiple-choice questions that explore appticants' feelings about punctuality and learning new jobs skills." *EN: bio info and employment history indicate employment requirement related information*); and

set of validated questions validated by statistically correlating system, the set of validated questions being a short subset of a larger in-depth assessment, the short subset being selected to present a job-related pre-screen that can be presented at the terminals faster than presenting all questions in the larger in-depth assessment (*EN: ¶1 applies*. See e.g. pg. 3 "Decision Point Data is in the process of adding a full fledged screening function to DPDApplicant. It is working with Batrus Hollweg, a Dallas-based consultant that helps foodservice operators *select top-caliber employees*, to integrate a psychological

test into DPDApplicant. The personality test will *measure, among other factors, customer-service orientation, propensity to follow rules and teamwork*");

a scoring system for automatically scoring the applicant responses in real time, the scoring system comparing applicant responses for requirements questions to employer requirements and being validated to predict both performance and turnover potential (See also pg. 3 "On a monthly basis, DPDApplicant generates an employee "Profiler," which over time allows organizations to benchmark the success of its hiring practices by *measuring average employee-retention patterns and turnover rates,*");

a scoring database connected to the applicant screening server (See e.g. pg. 3 where it states "Once an application is complete the DPD Screen Phone transmits responses to Decision Point Data's host system, which consists of a Compaq Pro Atliant computer with RAID Level Five running Wjndows NT and an SQL Server for *database applications*");

an applicant input system located on the employer's premises (*EN: ¶ 2 applies*) and configured to administer an in-depth assessment to an applicant at the employer's premises after the applicant has come to the employer's premises and logged on (*EN: ¶ 2 applies.* See e.g. pg. 4 where it states "The second procedure is that responses from the automated prescreening sessions are sent directly to the area or district manager by fax. The manager then conducts a *follow-up interview, either in person or over the telephone.*" See also pg. 3 "Retailers also have adopted DPDApplicant. JumboSports, the Tampa, Fla.-based sporting-goods chain, is rolling out the system and by early August will have *installed two DPD Screen Phones in each of its 85 units.*"); and

a viewing system for permitting the employer to view applicant results from the electronic prediction system and the applicant's rank order (See e.g. pg. 3 where it

states "On a monthly basis, DPDApplicant generates *an employee "Profiler,"* which over time allows

organizations to benchmark the success of its hiring practices by *measuring average employee-retention*

patterns and turnover rates,"), the applicant results providing information on applicants who

have a high probability of performing successfully and not terminating early (*EN: ¶ 3*

applies. See e.g. pg. 3 where it states "On a monthly basis, DPDApplicant generates *an*

employee "Profiler," which over time allows organizations to benchmark the success of its hiring practices

by *measuring average employee-retention patterns and turnover rates,*").

Claim 16: Claim 16 is drawn to claim 15. See the rejection above. Regarding "an

employer job advertisement identifying a uniform resource locator" (See e.g. pg. 4

where it states "As the Internet gains even greater acceptance, foodservice operators will utilize the

World Wide Web to prescreen applicants". *EN: In order to utilize the www for prescreening,*

the url must be "advertised" somewhere somehow. As such, it is also inherent. EN: the

cited section is applicable to DPDApplicant system, not just Aspen Tree).

Claim 17: Claim 17 is boarder version of claim 15. See the rejection above.

Regarding "a resource identified in an employer job advertisement" (See e.g. pg. 4

where it states "As the Internet gains even greater acceptance, foodservice operators will utilize the

World Wide Web to prescreen applicants". *EN: In order to utilize the www for prescreening,*

the website (i.e. the "resource") must be "advertised" somewhere somehow. As such, it

is also inherent. EN: the cited section is applicable to DPDApplicant system, not just

Aspen Tree).

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

In re pgs. 13-14, applicant argues

> Rubenstein discloses four distinct systems for hiring operations -- the "HReasy" system,
> the "DPDApplicant" system, and the Aspen CAPS and ApView systems. Each of these systems
> is an independent system. In using Rubenstein to reject the present Application for anticipation,
>
> the Office Action combines aspects of the distinct systems. However, the Office Action does not
> cite any single system as disclosing each and every element of the claims.

In response, the Examiner disagrees.

While Rubenstein discloses different system, the rejection was primarily based

on DPDApplicant system. See the rejection mapping.

In re pgs 14-15, applicant argues

> Even if the distinct systems in Rubenstein were to be properly combined in an
> obviousness rejection, none of the systems in the article still does not disclose a statistical
> correlation system for validating a set of application questions by statistically correlating job
> performance ratings of a plurality of hired workers with previous responses given by the workers
>
> to application questions before the workers were hired as required by amended claims 15-17.
> Accordingly, the claims at issue are not obvious over Rubenstein.

In response, the Examiner disagrees. See the rejection above.

In re pg. 15, applicant argues

> The Rubenstein disclosure fails to disclose a statistical correlation system for validating a
> set of application questions by statistically correlating job performance ratings of a plurality of
> hired workers with previous responses given by the workers to application questions before the
> workers were hired. Rubenstein merely discloses systems that "can" have their questions
> customized by the provider. There is no mention in Rubenstein that "[e]mployee performance
> evaluation measures actual job performance of the applicant or incumbent after holding the job
>
> for a period of time. This information is fed back to test design and/or test administration."
> (Dewar, [0101]) Further, Rubenstein mentions only an employee "Profiler" that measures
> "average" employee retention patterns and turnover which, in turn, will help benchmark the
> success of hiring practices. Thus, Rubenstein fails to disclose any examination of "job
> performance ratings" as disclosed in amended claims 15-17, instead Rubenstein merely discloses
> the examination of entry and exit dates for benchmarks of hiring practices. Further, Rubenstein
> discloses benchmarking "hiring practices." Thus, these "benchmarks" merely give indications as
> to the entire process from initial pre-screen to the in-person interview. Finally, the "HReasy"

In response, the Examiner disagrees.

1) Applicant fails to further define "job performance rating". As such, anything related to job performance reads on the claim. In instant case, "turnover rate", "retention patterns" clearly reads on "job performance rating". A high turnover rate simply means poor job performance, and vice versa. The longer the retention period, the better the employee is.

Examiner Note

¶ 1: immaterial. What kind of questions does not affect the structures or functions of the system. In other words, these questions are considered as non functional descriptive materials.

¶ 2: immaterial. Whether the input system is located on the employer's premises does not affect the structures or functions of the system.

¶ 3: immaterial. It is merely an intended uses of the result and does not affect the structures or functions of the system.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lut Wong whose telephone number is (571) 270-1123. The examiner can normally be reached on M-F 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent David can be reached on (571) 272-3080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Patent Examiner, AU 2129

/David R Vincent/
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